

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 71 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DILIPSINH CHHATRASINH CHAUHAN

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR IS SUPEHIA for Petitioner
MR PR JOSHI AGP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/10/2000

ORAL JUDGEMENT

The petitioner, an Armed Police Constable, challenges the order dated 31st December, 1992, placing him under suspension. The only contention raised is the order of suspension has been made in contravention of Rule 156 of the Bombay Civil Services Rules, 1959

(hereinafter referred to as 'the Rules') in as much as no prior approval of the Secretary of the Administrative Department in the Government has been obtained. It appears that an offence being No.I-CR-271/92, punishable under sections 323, 324, 504, 341 and 114 IPC has been registered against the petitioner in Dehgam Town Police Station. Pursuant to the said offence registered against the petitioner, the petitioner has been placed under suspension by the impugned order dated 31st December, 1992 pending criminal prosecution/departmental inquiry. Mr. Supehia has relied upon the Government Notification dated 21st August, 1985 (Annexure-B to the petition). The said Notification has been issued in exercise of the power conferred upon proviso to Article 309 of the Constitution of India. Clause (b) of Rule 156 of the Rules has been substituted. The substituted clause (b) in so far as it is relevant reads as under :

2 (b) A servant of Government (whether prosecuted or not) should be placed under suspension only if -

(1) xxx xxx xxx

(2)(a) xxx xxx xxx

(b) xxx xxx xxx

(c) The Gazetted officers shall not be placed under suspension without prior approval of the Chief Secretary. Similarly, non-Gazetted Government servant shall not be placed under suspension without the prior approval of the Secretary of the Administrative Department concerned.

It is submitted that the above referred clause (c) makes the prior approval of the Secretary in the concerned Department sine-qua-non for placing a non-Gazetted servant under suspension under clause (a) of Rule 156 of the Rules. It is indisputable that the petitioner herein is a non-Gazetted Government servant and he could not have been placed under suspension pending investigation/trial into a criminal charge without prior approval of the Secretary in the concerned Department. The aforesaid pre-requisite having not been satisfied in the case of the petitioner, the impugned order of suspension is null and void.

I am unable to accept this contention. Rule 2 of the Rules makes the said Rules applicable to all members of servants and holders of post whose conditions of

service the Government is competent to prescribe. Clause (b) of Note (1) thereunder, makes the said Rules applicable to the members of the Bombay Police Force except in matters otherwise provided by or under the Bombay Police Act, 1951. The suspension of the Police Officer pending prosecution/departmental inquiry is governed by the Bombay Police (Punishment and Appeal) Rules, 1956, framed in exercise of the powers conferred by clause (c) of sub-section (2) of section 25 read with section 5 (b) of the Bombay Police Act, 1951. Thus, there has been a specific provision governing the suspension of the Police Officer pending prosecution/departmental inquiry. The provisions made under Rule 156 of the Rules, therefore, shall not apply to the Police Officers appointed under the Bombay Police Act, 1951. The suspension of the petitioner, therefore, can not be said to have been made in contravention of the provisions contained in Rule 156 of the Rules, nor the same can be said to be illegal in any manner. Same is the view expressed by this court in the matter of PARSHOTTAMBHAI PARMABHAI VS SHIVANAND JHA DSP KHEDA (1991 {2} GLR 1265).

I am at pains to note that though the issue has been finally decided in the above referred matter of Parshottambhai Parmabhai (supra) as early as on 19th January, 1991, the very issue has been raised in this petition long thereafter by the same learned advocate. The learned advocate being an officer of the court, is duty bound to point out correct position of law to the court and to refrain from filing frivolous proceedings.

In view of the above discussion, the petition is dismissed. Rule is discharged with costs. The cost is quantified at Rs.3000/-. The respondents shall be at liberty to recover the amount of costs from the salary/subsistence allowance or from any other amount that may be due and payable to the petitioner.

(MS R.M.DOSHIT J)

JOSHI